

# Stamp Duties: When do you have to think about it



J Van der Velde

2018



## Stamp Duties

2

- Duty on instruments and /or transactions
- Stamp Duty is predicated upon
  - instruments
  - effecting or evidencing
  - a transaction
- Duty assessed on arm's length value property
  - consideration



VdV Legal

## Stamp Duties

3

- Necessary connection with South Australia
  - Division 3
- Joint and several liability
  - Section 4
- No instrument can be received in evidence
- Timing
  - Executed in SA – stamp & pay in 2 months
  - Executed outside SA – stamp & pay in 6 months or 2 months after being received into SA
    - Section 20



VdV Legal

## Dutiable Property

4

- Land
  - Interests in land
    - Lease
    - Easement
    - Rent charge
    - Profit a prendre



VdV Legal

## Dutiable Property

5

- Land used for primary production
- Residential land
- Qualifying land
  - Prior to 7 December 2015 Full duty
  - 7 December 2015 to 30 June 2017 2/3 duty
  - 1 July 2017 to 30 June 2018 1/3 duty
  - From 1 July 2018 No duty

*Statutes Amendment and Repeal (Budget 2015) Act 2015*



VdV Legal

## Dutiable Property

6

- Land is Qualifying dependent upon LUC
  - Commercial (LUC 2000-2990)
  - Industrial (LUC 3100-3909)
  - Vacant Land (some exceptions) (LUC 4110-4600)
  - Institutions (LUC 5100-5990)
  - Public Utilities (LUC 6100-6990)
  - Recreation (LUC 7100-7900)
  - Mining and Quarrying (LUC 8100-8409)
- Objections?



VdV Legal

## Business Transfers

7

- Sale of Business
  - No dutiable property if no land or interest in land
  - IC 99
- Post 1 July 2018
  - Lease of qualifying land
  - Lease of primary production or residential land



VdV Legal

## Dutiable Property

8

|                 |   |
|-----------------|---|
| <b>Victoria</b> | Land / interests in land s10 <i>Duties Act 2000</i> |
| <b>NSW</b>      | Land / interests in land s11 <i>Duties Act 1997</i> |
| <b>ACT</b>      | Land / interests in land s10 <i>Duties Act 1999</i> |
| <b>Tasmania</b> | Land / interests in land s9 <i>Duties Act 2001</i>  |



VdV Legal

## Dutiable Property

9

|                           |   |
|---------------------------|---|
| <b>Queensland</b>         | Land and other assets s10 <i>Duties Act 2001</i>    |
| <b>Western Australia</b>  | Land and other assets s15 <i>Duties Act 2008</i>    |
| <b>Northern Territory</b> | Land and other assets s4 <i>Stamp Duty Act 1978</i> |



VdV Legal

## Business Transfers

10

- Business operations Qld NT or WA
- Which other assets are included?
- Where is Goodwill/ other intangibles
  - WA
  - Qld
  - NT



VdV Legal

## Gingerbread House

11



- Hansel buying business for \$5m
- Operates in 3 states
  - SA
  - Qld
  - WA
- Assets
  - Premises
  - P & E
  - Trademark
  - Stock
  - Goodwill



VdV Legal

## Witch's Gingerbread

12



|   | SA                | Qld         | WA          |
|---|-------------------|-------------|-------------|
| <b>Premises</b>                               | Lease @ Mkt Value | \$2,000,000 | \$1,000,000 |
| <b>Plant &amp; equipment</b>                  | \$240,000         | \$80,000    | \$80,000    |
| <b>Registered Trademark – Value \$900,000</b> | ?                 | ?           | ?           |
| <b>Trading Stock</b>                          | \$20,000          | \$40,000    | \$40,000    |
| <b>Goodwill – Value \$600,000</b>             | ?                 | ?           | ?           |

VdV Legal

## Gingerbread House

13



### > Sales

| Year         | SA                 | Qld                | WA                 |
|--------------|--------------------|--------------------|--------------------|
| 2015         | \$900,000          | \$1,100,000        | \$1,000,000        |
| 2016         | \$700,000          | \$1,200,000        | \$1,100,000        |
| 2017         | \$800,000          | \$1,300,000        | \$900,000          |
| <b>Total</b> | <b>\$2,400,000</b> | <b>\$3,600,000</b> | <b>\$3,000,000</b> |

VdV Legal

## Witch's Gingerbread SA

14



### > Market Value Lease

#### BUT

- > Revenue SA => \$1 dutiable value
- > P & E fixed to land \$100,000
- > Duty on \$100,000 = \$2,830
- > Qualifying land => pre June 2018 = \$943.33
  - > post July 2018 = \$0



VdV Legal

## Witch's Gingerbread QLD

15



- > Duty on:
  - > P & E
  - > Stock
  - > Premises
  - > Goodwill
  - > Trademark

> Value of Goodwill  
 $\$600k \times 3.6 \text{ m}/9 \text{ m}$   
 = \$240,000

> Value of Trademark  
 $\$900k \times 3.6 \text{ m}/9 \text{ m}$   
 = \$360,000



VdV Legal

## Witch's Gingerbread QLD

16



|               |                    |
|---------------|--------------------|
| Premises      | \$2,000,000        |
| Plant         | \$80,000           |
| Trading Stock | \$40,000           |
| Goodwill      | \$240,000          |
| Trademark     | \$360,000          |
| <b>Total</b>  | <b>\$2,720,000</b> |

Duty of **\$136,925.00** payable in Qld



VdV Legal

## Witch's Gingerbread WA

17



- > Duty on:
  - > Premises
  - > Goodwill
  - > Trademark
  - > P & E

> Value of Goodwill  
 $\$600k \times 3 \text{ m}/9 \text{ m}$   
 = \$200,000

> Value of Trademark  
 $\$900k \times 3 \text{ m}/9 \text{ m}$   
 = \$300,000



VdV Legal

## Witch's Gingerbread WA

18



|                      |                    |
|----------------------|--------------------|
| <b>Premises</b>      | <b>\$1,000,000</b> |
| <b>Plant</b>         | <b>\$80,000.00</b> |
| <b>Trading Stock</b> | <b>\$0.00</b>      |
| <b>Goodwill</b>      | <b>\$200,000</b>   |
| <b>Trademark</b>     | <b>\$300,000</b>   |
| <b>Total</b>         | <b>\$1,580,000</b> |

Duty of **\$75,285.00** payable in WA



VdV Legal



## Witch's Gingerbread

19

|              | SA                | Qld         | WA          |
|--------------|-------------------|-------------|-------------|
| Premises     | Lease arrangement | \$2,000,000 | \$1,000,000 |
| P & E        | \$100,000         | \$80,000    |             |
| Trademark    |                   | \$360,000   | \$300,000   |
| Stock        |                   | \$40,000    |             |
| Goodwill     |                   | \$240,000   | \$200,000   |
| Duty Payable | \$943.33          | \$136,925   | \$75,285    |

What if.....?



VdV Legal

## Share Transfers

20

- Share transfers
  - Zero duty (unless landholder rules apply)
- Landholder
  - Private company/ Trust
    - Pre 1 July > \$1M land and majority ownership changes
    - Post 1 July majority ownership changes
  - Listed company / Trust
    - Pre 1 July > \$1M land and 90% + ownership changes
    - Post 1 July 90% + ownership changes



VdV Legal

## Share Transfers

21

|                   |       |   |
|-------------------|-------|---|
| <b>Queensland</b> | \$2 m | 50% + unlisted entity<br>90% + listed entity  |
| <b>Victoria</b>   | \$1 m | 20% + private unit trust scheme<br>50% + private company /wholesale unit trust scheme<br>90% + listed company |
| <b>NSW</b>        | \$2 m | 50% + private unit trust /company<br>90% + public unit trust /listed company                                  |



VdV Legal

## Share Transfers

22

|                           |         |   |
|---------------------------|---------|---|
| <b>Western Australia</b>  | \$2 m   | 90% + listed landholder<br>50% + any other landholder               |
| <b>Northern Territory</b> | \$1/2 m | 50% + private company /wholesale unit trust<br>90% + listed entity  |
| <b>ACT</b>                |         | 50% private company /private unit trust scheme                      |
| <b>Tasmania</b>           | \$1/2 m | 50% private company /unit trust<br>90% + public company /unit trust |



VdV Legal

## Primary Production

23

- Business of Primary Production
  - Area of land
  - Transferor relationship to Transferee
  - Carrying on a business of primary production
  - Trustee requirements
  - Family Company



VdV Legal

## Primary Production

24

|                   |   |
|-------------------|---|
| <b>Queensland</b> | <i>Duties Act 2001</i> s 105<br>Cousins only until 22 May 2018<br>Transferee must be individual                   |
| <b>Victoria</b>   | <i>Duties Act 2000</i> s 56<br>Land zones have different requirements<br>Transferee must be individual or trustee |
| <b>NSW</b>        | <i>Duties Act 1997</i> s 274<br>Transferee must be an individual<br>If transferor is trustee - taker in default   |



VdV Legal

## Primary Production

25

|                           |   |
|---------------------------|---|
| <b>Western Australia</b>  | <i>Duties Act 2008</i> s 99 - s 106<br>Transferor must be individual<br>Transferee individual or trustee<br>No subsequent exemption 5 years |
| <b>Northern Territory</b> | <i>Stamp Duty Act</i> s 87<br>No subsequent exemption 5 years   |
| <b>ACT</b>                | <i>Duties Act 1999</i> s 230<br>Transferee must be individual   |
| <b>Tasmania</b>           | <i>Duties Act 2001</i> s 225<br>Land must be used for primary production but may be by unrelated party                                      |



VdV Legal

## Trust Issues

26

### Discretionary trust

- Declaration
- Settlement
- Variation which affects beneficial interest
  - s 2
  - s 71(8)



VdV Legal

## Trust Issues

27

### Unit trust

- From 1 July 2018
  - sub-sections; 71(4), (4a) and (4b) repealed
  - Landholder threshold removed
  - No duty on qualifying land



VdV Legal

## Surcharge

28

### Foreign Resident Surcharge

- 7% from 1 January 2018

### Payable on residential property

- Who is a foreign resident
  - Individual
  - Corporate
  - Trustee
- Provisions to charge if owner becomes foreign



VdV Legal

## Surcharge

29

|                          |    |   |
|--------------------------|----|---|
| <b>Queensland</b>        | 3% | Not Australian citizen or permanent resident  |
| <b>Victoria</b>          | 7% | Not Australian citizen or permanent resident<br>Applies to non residential property |
| <b>NSW</b>               | 8% | FIRB definition of foreign person   |
| <b>Western Australia</b> | 4% | Commencing 1 January 2019   |



VdV Legal

## Questions

30

Julie Van der Velde  
VdV Legal  
37 Angas Street  
Adelaide SA 5000  
Tel 7009 4855  
Julie@vdvlegal.com.au



VdV Legal